IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

OP.No. 31168 of 2001(I)

PETITIONERS:

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1. A.P.SHOWKATH ALI, SUB INSPECTOR OF POLICE, C.B. C.I.D., NARCOTIC AND ECONOMIC OFFENCES, KOZHIKODE.

2. K.B.JEEVANANDAN, SUB INSPECTOR OF POLICE, NJARAKKAL POLICE STATION, ERNAKULAM RURAL.

3. SURESH T.K., SUB INSPECTOR OF POLICE, CORPORATE CELL, KOZHIKODE CITY.

4. ABDUL RASHEED, SUB INSPECTOR OF POLICE, THENMALA POLICE STATION, KOLLAM DISTRICT.

5. JOHNSON CHARLES, SUB INSPECTOR OF POLICE, DISTRICT SPECIAL BRANCH, COCHIN CITY.

BY ADV. SRI.M.K.DAMODARAN (SR.)

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, HOME DEPARTMENT, TRIVANDRUM.

2. THE DIRECTOR GENERAL OF POLICE, POLICE HEAD QUARTERS, TRIVANDRUM.

3. THE CONVENOR, DEPARTMENTAL PROMOTION COMMITTEE (LOWER), HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

4. VIJAYAPPAN P.K., SUB INSPECTOR OF POLICE, MANNAR POLICE STATION, ALAPPUZHA.

ADDL. R5. K.S. BABY VINOD, S.I. OF POLICE, ALWAYE TRAFFIC POLICE STATION, ALWAYE.

ADDL.R6. P.T.KRISHNANKUTTY, S.I. OF POLICE, ANGAMALY POLICE STATION, ANGAMALY.

ADDL. R5 AND R6 ARE IMPLEADED AS PER ORDER DT.14.12.01 IN CMP.62109/01.

BY ADV. SRI.RASHEED C.NOORANAD
SRI.G.GOPAKUMAR (TVM)
GOVERNMENT PLEADER SRI. P.K. BABU
SRI.T.P.KELU NAMBIAR (SR.)
SMT.V.P.SEEMANDINI (SR.)
SRI.S.SREEKUMAR
ADDL.ADVOCATE GENERAL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/07/2007 ALONG WITH WP(C) 35820/05, THE COURT ON THE 10/8/2007 DELIVERED THE FOLLOWING:

ORDER ON IA 4183/07 IN O.P.31168/2001

DISMISSED.

SD/- K.S.RADHAKRISHNAN,JUDGE.
SD/- ANTONY DOMINIC,JUDGE.

10/8/2007

APPENDIX

PETITIONERS' EXTS.

EXT.P1 TRUE COPY OF THE ORDER OF THE DY INSPECTOR GENERAL OF POLICE (ADMN) DATED 5.4.95.

EXT.P2 TRUE COPY OF THE ORDER OF THE DY. INSPECTOR ENERAL OF POLICE, THRISSUR RANGE DATED 10.3.2000.

EXT.P3 TRUE COPY OF THE GOVERNMENT ORDER G.O.(MS) nO.252/HOME DATED 17.5.1963.

EXT.P4 TRUE COPY OF THE G.O.(P) 38/84/HOME DATED 30.3.1984.

EXT.P5 TRUE COPY OF GOVERNMENT ORDER G.O.(P) NO.3/2000/P&ARD DATED 5.2.2000

EXT.P6 TRUE COPY OF THE GOVERNMENT ORDER G.O.(MS)241/2000/HOME DATED 17.11.2000.

EXT.P7 TRUE COPY OF THE ORDER OF THE DIRECTOR GENERAL OF POLICE, TRIVANDRUM DATED 20.11.2000.

EXT.P8 TRUE COPY OF THE CIRCULAR NO.32/65 DATED 13.5.1965 ISSUED BY THE 1ST RESPONDENT.

EXT.P9. TRUE COPY OF THE ORDER NO.A1-2506/99 KR DATED 5.10.2000 ISSUED BY THE DY. INSPECTOR GENERAL OF POLICE, KANNUR.

EXT.P10. TRUE COPY OF THE ORDER OF THE DIRECTOR GENERAL OF POLICE, DATED 26.9.2001.

EXT.P11. TRUE COPY OF THE PROVISIONAL SENIORITY LIST OF SUB INSPECTORS OF POLICE (GE) FOR THE PERIOD FROM 1.1.90 TO 31.12.94 ISSUED BY THE 2ND RESPONDENT ALONG WITH THE LETTER DATED 13.9.2001 OF THE 2ND RESPONDENT TO THE SUPERINTENDENT OF POLICE.

EXT.P12. TRUE COPY OF THE COMMUNICATION NO.A2/96555/05 DATED 24.11.2005 OF THE 2ND RESPONDENT.

EXT.P13. TRUE COPY OF THE COMMUNICATION NO.A2/81100/06 DATED 19.10.2006 OF THE SECOND RESPONDENT.

ANNEXURE 1 TRUE COPY OF SELECT LIST OF CIRCLE INSPECTORS OF POLICE.

4TH RESPONDENT'S EXTS:

EXT.R4(1) A TRUE COPY OF THE ORDER G.O.(MS) NO.2/93 HOME DT. 5.1.1993.

EXT.R4(2) A TRUE COPY OF THE ORDER NO.A5-3495/2001 TR DT. 1.3.2001.

EXT.R4(3) A TRUE COPY OF THE ORDER NO.A5-3495/2001 TR DT. 1.3.2001.

EXT.R4(4) A TRUE COPY OF THE PROBATION ORDER TOO THE POST OF SUB INSPECTOR DTD. 30.10.01.

EXT.R4(5) A TRUE COPY OF THE PROBATION ORDER ISSUED BY THE DIRECTOR GENERAL OF POLICE DTD. 23.11.04

K.S.Radhakrishnan
&
Antony Dominic, JJ.
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O.P.No.31168/2001 &WP(C) 35820/2005
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Dated this the 10th day of August, 2007.

JUDGMENT

Antony Dominic,J.

O.P.No.31168/2001

Main prayer in O.P.No.31168 of 2001 is for quashing Ext.P6 order issued by the first respondent granting exemption to 37 Assistant Sub Inspectors of Police from passing Departmental test invoking Rule 39 of the Kerala State and Subordinate Services Rules, 1958 (hereinafter referred to as "K.S. & S.S.R."). Petitioners also seek to quash Exts.P10 and P11, provisional and final seniority lists of Sub Inspectors of Police, to the extent it gives seniority to the Assistant Sub Inspectors of Police over the

directly recruited Sub Inspectors of Police. A direction to the respondents to prepare a fresh seniority list of Sub Inspectors of Police and a select list of Sub Inspectors of Police for promotion to the post of Circle Inspectors of Police on that basis was also sought for.

2. Petitioners are directly recruited Sub Inspectors of Police. On 20.8.1988 the first respondent made a requisition to the Kerala Public Service Commission for recruitment of Sub inspectors of Police, based on which applications were invited in 1991, to which the petitioners responded. On conclusion of the selection process a rank list was published on 18.10.1994 and the petitioners were assigned rank Nos. 1, 59, 137, 31 and 173 respectively. Thereafter, they were advised for appointment on 4.1.1995 and eventually by Ext.P1 dated 5.4.1995, 189 candidates in the rank list, including the petitioners, were appointed. They completed practical training and were posted as Sub Inspectors of Police (on probation) on 12.4.1997 and their probation was declared with effect from 12.4.1999 and Ext.P2 is the order dated 10.3.2000 declaring probation of the first

petitioner. They passed Departmental test conducted by the Kerala Public Service Commission and became eligible for promotion as Circle Inspectors of Police after having completed six years service in terms of Rule 4(1)(b) of Ext.P3 Special Rules.

3. The sixth respondent issued Ext.P4 for special recruitment of Scheduled Caste/Scheduled Tribes to the post of Assistant Sub Inspectors of Police and pursuant thereto, 37 persons were recruited. Kerala Public Service Commission on 11.5.1988 advised those candidates and they were thereafter appointed. Although they had not completed their probation or passed the the Departmental test, they were promoted to the post of Sub Inspectors of Police during May, 1993. According to the petitioners, by Ext.P5, Government had ordered that those entered service after 1.1.1986 are not entitled to get exemption from passing the Departmental test and despite Ext.P5, Government issued Ext.P6 dated 17.11.2000 invoking Rule 39 of the General Rules exempting 37 Assistant Sub Inspectors of Police from passing the Departmental test prescribed under the Special Rules. According to the petitioners, Ext. P6 is also against Rule 13AA of the General Rules. Thereafter, the second

respondent issued consequential orders as per Ext.P7 directing declaration of their probation and to sanction consequential benefits. It is stated that based on Exts.P6 and P7 Assistant Sub Inspectors of Police were assigned seniority over the petitioners and that Exts.P10 and P11 provisional and final seniority lists indicate that they were promoted as Sub Inspectors of Police on 15.5.1993 and regularised with effect from 1.3.1991. They also complain that the appointments made are also in violation of Ext.P8 circular fixing the ratio 2:1 between the direct recruitees and promotees to the post of Sub Inspectors of Police. It is in the above background that the petitioners are seeking to have Exts.P6, P10 and P11 quashed and recast the seniority and prepare a fresh select list for promotion to the post of Circle Inspectors of Police.

4. Respondents 1 to 3 and the fourth respondent have filed separate counter affidavits. According to them, Assistant Sub Inspectors of Police were already in service much before the petitioners were even recruited to the post of Sub Inspectors of police. It is stated that applications were invited for appointment to the post of Assistant Sub Inspectors of Police on 30.3.1984

and selected candidates were advised on 11.5.1988. They were appointed on training on 1.11.1988 and on completion of training, on 15.9.1990, their services were regularised with effect from 1.3.1991. It is stated that as per Rules, a period of six years service is required for promotion to the post of Sub Inspectors of Police, which they completed in 1994. It is stated that in terms of Rule 9(a) of the Special Rules, a pass in the Departmental test conducted by the Kerala Public Service Commission is a mandatory condition for promotion and grant of increments. But however, as the test was not conducted by the Kerala Public Service Commission, they could not pass such qualifying examination. While on the one side they were thus disabled from obtaining the essential qualification for declaration of their probation and grant of increments, the promotee Assistant Sub Inspectors of Police, including those who were junior to them, were promoted superseeding the directly recruited Assistant Sub Inspectors of Police. In view of that situation, the directly recruited Assistant Sub Inspectors of Police filed O.P.No.12822 of 1991 before this Court and an interim order dated 30.3.1992 was passed by this Court directing the

respondents therein not to promote any Assistant Sub Inspector of Police, who were juniors to the petitioners therein. In the aforesaid circumstances by Ext.R4(1) order dated 5.1.1993 temporary promotions of Assistant Sub Inspectors of Police were ordered as Sub Inspectors of Police. But even thereafter there was no progress in the matter of Departmental test which resulted in Assistant Sub Inspectors not being granted annual increment in the post of Sub Inspectors of Police. Situation also would have led to their further supersession in the matter of promotion to the post of Circle Inspectors of Police as well. In these circumstances, first respondent issued Ext.P6 order dated 17.11.2000 invoking Rule 39 of the General Rules accepting the proposal that was made by the Director General of Police. It was thereafter that by Ext.R4(2) dated 1.3.2001 that the probation of Assistant Sub Inspector of Police was declared with effect from 16.10.1992 and their probation as Sub Inspectors of Police was also declared with effect from 2.5.1994 and Ext.R4(4) is the order dated 30.10.2001 in respect of the fourth respondent. It is stated that it is on the basis of Ext.P6 and the declaration of their probation as stated above that they were included in Exts.P10

and P11. In so far as the fourth respondent is concerned, it is stated that he was further promoted as Circle Inspector of Police on 9.1.2002 and his probation was also declared as per Ext.R4(5) dated 23.11.2004.

5. Senior Counsel Sri.M.K.Damodaran, appearing for the petitioners submitted that Ext.P6 order dated 17.11.2000 issued by the first respondent invoking Rule 39 of K.S. & S.S.R. and exempting the directly recruited Assistant Sub inspectors of Police from passing the obligatory Departmental test was illegal. He would submit that there was no circumstance warranting invocation of the extra ordinary powers under Rule 39 of K.S. & S.S.R. which has the disastrous effect of Assistant Sub Inspectors of Police having a march over the directly recruited Sub Inspectors of Police in the matter of seniority and further promotion. It is also contended that Ext.P6 is against Ext.P5 order dated 5.2.2000 issued by the first respondent making it clear that Scheduled Caste/Scheduled Tribe candidates, who have entered after 1.1.1986 are not entitled to any test exemption. Sri. Damodaran made reference to Government Order, G.O.(P) No.2/07/P&ARD dated 20th January, 2007, which reiterates the

position. Further reference was also made to Rule 13AA of K.S. & S.S.R. and in particular its proviso which specifies that the Rule shall not be applicable to tests prescribed for purposes of promotion to the executive staff below the rank of Sub inspectors of Police of the Police Department. His contention is that invocation of Rule 39 was totally unwarranted. Sri.Damodaran made reference to the decisions of this Court in **T.C.Sreedharan Pillai and Others** v. **State of Kerala and Others** – 1973 K.L.T. 151 (F.B.) and **Koyit Joseph and Others** v. **Subash George and Others** – ILR 2006(3) Kerala 162. He has also urged that Assistant Sub Inspectors of Police were promoted in May, 1993 when their probation was not even declared and that they were included in the list for promotion to the post of Circle Inspectors of Police when their probation in the post of Sub Inspectors of Police was also not declared. It was also contended that although Ext.P8 specified a ratio of 2:1 in the matter of promotion to the post of Sub Inspectors of Police, that Rule also was violated.

6. On behalf of respondents 1 and 2, Government Pleader and on behalf of fourth respondent, Sri. T.P.Kelu Nambiar, Senior

Advocate addressed arguments. It was submitted that the issues raised were settled even before the petitioners entered into service. It was pointed out that Government had the power to invoke Rule 39 of K.S. & S.S.R. and the circumstances prevailing and resulted in stagnation of the Assistant Sub Inspectors of Police without even grant of increments, warranted rectification of an anomalous situation. It was pointed out that even in the absence of an order under Rule 39 of K.S. & S.S.R., seniors can enforce their right for promotion in such circumstances. In support of this contention, we were referred to the decisions of this Court in the case of **Ammini** v. **State of Kerala** – 2000(2) K.L.T. 764 and **Ekm. Dt. PSC Last Grade Servants Rank Holders' Association** v. **Chief Secretary to Govt.** - 2001(3) K.L.T. SN. Page 42. Reference was also made to the decision reported in **Sherafuddin** v. **State of Kerala** – 2004 (2) K.L.T. 731 and the judgment in W.A. No.1138 of 2006 by Smt.V.P.Seemanthini, Senior Advocate, who appeared on behalf of additional respondents.

7. We have considered the submissions made. The main issue that calls for our decision is the validity of Ext.P6 and the

correctness of the inclusion of directly recruited Assistant Sub Inspectors of Police in Exts.P10 and P11. Rule 39 of K.S. & S.S.R. provides that notwithstanding anything contained in the Rules or in any other Special Rules or Government Orders the Government shall have the power to deal with the case of any person or persons serving in a civil capacity under the Government of Kerala or any candidate for appointment to a service in such manner as may appear to the Government to be just and equitable. This Rule has been considered by this Court on various occasions. In the decision reported in **T.C.Sreedharan Pillai & Others** v. **State of Kerala & Others** – 1973 K.L.T. 151 it was held as follows:

> "Ordinarily, therefore, it is not expected that the power under Rule 39 should be resorted to merely for the purpose of getting round the provision contained in any of the general rules or special rules. Rule 39 is to be invoked only to meet exceptional situation where gross injustice or inequity is seen to result from the application of the rules in all their rigour. In such cases and such cases alone, Rule 39 empowers the designated authority to mete out equity and justice by passing appropriate orders in relaxation of the

provisions of the rules concerned".

In **Koyit Joseph and Others** v. **Subash George and Others** – ILR 2006(3) Kerala 162, a Division Bench of this Court held that Rule 39 of K.S. & S.S.R. has to be understood as giving power to the Government to set right matters, when otherwise there was imminent hardship or illegalities. What was contemplated was a relaxation in public interest and that appointments to the Police Force are to be made with reference to the rules framed under Public Services Act and it should not be mistaken that Rule 39 of the K.S.S.R. by itself confers a special sui juris or exclulsive power than that is prescribed by the Special Rules. Understanding the scope of Rule 39 of K.S. & S.S.R. as held by this Court in the aforesaid two judgments, we proceed to examine whether the circumstances justified invocation of the said Rule.

8. A reference to Ext.P6 discloses that 37 persons belonging to Scheduled Caste/Scheduled Tribe categories directly recruited as Assistant Sub Inspectors of Police during 1988 joined training from 1.11.1988 and that in terms of Rule 9(a) of the Special Rules, they should pass the test conducted by the Kerala

Public Service Commission for declaring satisfactory completion of their probation and for earning increments and that unfortunately, no test was conducted by the Kerala Public Service Commission till the date of the order. As a result, these 37 officers did not get an opportunity to appear for the test and consequently satisfactory completion of their probation could not be declared till then and that during 1991 when Assistant Sub Inspectors of Police, who were juniors to these 37 officers, were promoted as Sub Inspectors of Police these 37 Assistant Sub Inspectors of Police approached this Court and pursuant to an interim order passed by this Court, they were provisionally promoted as Sub Inspectors of Police. Even thereafter question of passing of the test for declaration of their probation in the lower category of Assistant Sub Inspectors of Police remained unresolved and on account of these reasons, Director General of Police reported that the seniority of these officers could not be fixed and that these officers were denied the annual increments due to them. It was also reported to the Government that these 37 persons had become senior Sub Inspectors of Police, who could be considered for the post of Circle Inspectors of Police and

that if the issue regarding passing of the test was not solved immediately, they were likely to be superseded to the post of Circle Inspectors of Police also for no fault of their's. Report further stated that the test has not been conducted for more than 12 years since their recruitment and that they were getting pay at the minimum of the scale of Assistant Sub Inspectors of Police and that after a lapse of more than 12 years insisting on the passing of the test by these officers was unjustified and illogical. On these reasons, Director General of Police proposed that this was a fit case for invoking the powers of the Government under Rule 39 of K.S. & S.S.R. Taking into account the extraordinary circumstances under which these officers have suffered for so long and examining the proposal in detail, Government passed Ext.P6 order, invoking its power under Rule 39 of K.S. & S.S.R. exempting these 37 directly recruited Assistant Sub Inspectors of Police from passing the test prescribed under Rule 9(a) of the Special Rules. These reasons have been reiterated by respondents 1 and 2 in their counter affidavit.

9. The reasons stated by the Government disclose an extra ordinary situation and the injustice that was meted out to the

Assistant Sub Inspectors of Police, warranting invocation of its powers under Rule 39 of K.S. & S.S.R. Reasoning of the Government that it was illogical and unjustified to ask the Assistant Sub Inspectors of Police to appear for the test after rendering service of 12 years in the post also cannot be said to be unreasonable. We are satisfied that Government was justified in invoking the power under Rule 39 of K.S. & S.S.R. and in our considered view, there is nothing illegal in Ext.P6 order of the Government.

10. The other contention regarding the invalidity of Ext.P6 is raised relying on Ext.P5 Government Order and Rule 13 AA of K.S. & S.S.R. True, Rule 13 AA of K.S. & S.S.R. provides thus:

> "Notwithstanding anything contained in these rules, the Government may, by order, exempt for a specified period, any member or members, belonging to a Schedules Caste or a Scheduled Tribe and already in service, from passing the tests referred to in rule 13 or rule 13A of the said Rules.
>
> Provided that this rule shall not be applicable to tests prescribed for purposes of promotion of the executive staff below the rank of Sub Inspectors belonging to the Police Department."

In terms of the proviso to this Rule, Rules shall not be applicable to the test prescribed for the purpose of promotion to the executive staff below the rank of Sub Inspectors belonging to Police Department. Although power of the Government to grant exemption is inapplicable in the case of test prescribed for the purpose of promotion to the executive staff below the rank of Sub Inspectors of Police belonging to Police Department, the limitations imposed by Rule 13 AA of K.S. & S.S.R. does not in any manner restrict the powers of the Government under Rule 39 of K.S. & S.S.R. which starts with a non obstante clause. Therefore, Rule 13AA of K.S. & S.S.R. cannot in any manner restrict the power of the Government. Similarly, Ext.P5 order issued under Rule 13 AA of K.S. & S.S.R. has been reiterated by the Government in its order dated 20.1.2007. That also cannot in any manner affect the power of the first respondent under Rule 39 of K.S. & S.S.R. For these reasons, we are not in a position to accept the contention of the petitioners that Ext.P6 is invalid for any reason.

11. As we have already mentioned, learned Senior Counsel for the fourth respondent referred us to the decisions of this

Court in **Ammini** v. **State of Kerala** – 2000(2) K.L.T. 764 and **Ekm. Dt. PSC Last Grade Servants Rank Holders' Association** v. **Chief Secretary to Government** – 2001(3) K.L.T. SN. Page 42. In the decision reported in 2000(2) K.L.T. 764, it has been held thus:

> "11. This Court had occasion to go into similar questions in Writ appeal No.155/1988 and Writ Appeal No.374/1988. In the former case, the question was one of promotion to the post of Tahsildar from that of Deputy Tahsildar. The survey test qualification which was one of the qualifications for promotion to the post could be acquired only when the candidates were deputed to undergo Survey training. The candidate had no opportunity or occasion to attend the training on his own. It was submitted in the O.P. Concerned that in the matter of sending candidates for training mistakes arose and consequently juniors became qualified earlier than the seniors as far as the Survey training qualification is concerned. It was found by the Division Bench based on the decision in Writ Appeal Nos. 374/88, 609/88, and 861/88 that even in the absence of any order of exemption passed invoking R.39 of the K.S. & S.S.R. Persons who have been denied opportunity for undergoing training cannot be

deprived of their right for promotion solely on the ground that they have not acquired the training qualification. The reason is that such late acquisition of qualification is not attributable to any fault on the part of the candidate; but it is only on account of the mistake committed by the Department in not sending them for training at the relevant point of time. It was further found that even without an order invoking power under R.39 of the K.S. & S.S.R. the seniors could enforce their right.

12. In Writ Appeal No.374/88, the question was one of promotion to the cadre of Assistant Directors in the Department of Animal Husbandry. The appellants herein were juniors to respondents 6 to 9 therein; but they could undergo the training required for promotion namely, training swine husbandry and pork processing or poultry husbandry earlier. With respect to the date of occurrence of the vacancy, the appellants therein were qualified persons, but respondents 6 to 9 had not become qualified as they were sent for training only subsequently. R.9 of the Special Rules concerned provided that selection of candidates for training necessary for holding any particular post should be made on the basis of the seniority and that junior should be selected only in case the senior expressed his unwillingess in writing to undergo such training. It

> was without obtaining any such statement of unwillingness from respondents 6 to 9 in Writ Appeal No.374/88 that the appellants therein were sent for training. It was found that the promotion post could not be filled merely based on the want of test qualification of respondents 6 to 9 as on the date of occurrence of the vacancy. They cannot be denied promotion when it became due to them according to their seniority merely on the ground that their juniors had completed the training as on the date of occurrence of the vacancy".

In the decision reported in **Sherafuddin** v. **State of Kerala** – 2004(2) K.L.T. 731, it has been held as follows:

> "Thus an overall assessment of the situation, it can be seen that respondents 3 and 6 cannot in any way be put to any prejudice for the only reason of not performing a task impossible of performance. They have been in service for quite long. There is no case that they are otherwise unsuitable or unfit to hold the various posts which they held such as Circle Inspector of Police, Deputy Superintendent of Police and Superintendent of Police. Their only deficiency was that they had not passed the examination which was never held. It is not a situation where respondents 3 and 6 failed to pass the test. Even the failure was

> made impossible by not conducting the examination. The inaction on the part of the Government shall not prejudice an otherwise eligible incumbent. If R.39 of the General Rules is not invoked in such situations, it would certainly lead to unfairness, inequity and injustice."

This principles have been followed in the judgment in W.A. No.1138 of 2006 as well. It is obvious that even in the absence of invocation of an order under Rule 39 of K.S. & S.S.R., Assistant Sub Inspectors of Police, who admittedly are seniors in service could not have been put to prejudice.

13. Now what remains to be considered is the sustainability of the complaint of the petitioners that Assistant Sub Inspectors of Police were provisionally promoted as Sub Inspectors of Police in May, 1993 when their probation was not declared. As we have already noticed, it was in pursuance to the interim order dated 30.3.1992 passed by this Court in O.P.No.12822 of 1991 that temporary promotion was granted to Assistant Sub Inspectors of Police by order dated 5.1.1993. The facts would indicate that for want of pass in the Departmental test their probation was not declared and in the meantime, Assistant Sub Inspectors, who

were juniors have superseeded them in their promotions to the post of Sub Inspectors of Police. As regards declaration of their probation is concerned, that could be done only after Ext.P6 order was issued by the Government invoking Rule 39 of K.S. & S.S.R. and immediately thereafter Ext.R4(2) dated 1.3.2001, probation of Assistant Sub Inspectors of Police was declared with effect from 16.10.1992. Evidently therefore when they were temporarily promoted as Sub Inspectors of Police in May, 1993, their probation was declared.

14. What remains to be considered is the correctness of their inclusion in Exts.P10 and P11 seniority lists. Complaint of the petitioners was that even in the category of Sub Inspectors of Police, their probation was not declared and in the absence of that they could not have been included in the seniority list of persons eligible for the post of Circle Inspectors of Police.

15. From the facts we have narrated herein above, it is evident that petitioners proceed on a wrong premise. The probation of the promotee Sub Inspectors of Police was declared with effect from 2.5.1994 and Ext.R4(4) is the order declaring probation of the fourth respondent. We were told that similar

orders have been passed in the case of others as well. If that be so, there is nothing irregular in the inclusion of their names in the provisional seniority list and final seniority list, which were finalised only in 2001. Though a complaint was raised that despite their entitlement for only 1/3rd vacancies, promotions have been made in excess of their quota. Apart from making this averment, which has been denied by the respondents, petitioners have not placed any materials in support of their contentions.

16. In the circumstances, we see no merit in O.P.No.31168 of 2001 and the same is only to be dismissed. We do so.

W.P.(C).No.35820/05

17. Petitioner in O.P.No.35920 of 2005 is also a directly recruited Assistant Sub Inspector of Police and is seeking reliefs which are identical to that of the petitioners in O.P.No.31168 of 2001. Apart from the fact that the petitioner herein belongs to Scheduled Tribe Community, which is of no relevance to the issue raised, there is no distinguishing factor between these two cases.

For the reasons stated herein above, this Original Petition also lacks merits and is only to be dismissed and we do so.

K.S.Radhakrishnan,
Judge.

Antony Dominic,
Judge.

ess 28/7